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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

AT&T COMMENTS

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September 15, 1997

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SUMMARY

This is the third rulemaking on carrier selection that the Commission has initiated since 1991. In the first of those proceedings, the Commission adopted verification procedures for change orders obtained through "out-bound" telemarketing calls to assure that those transactions would not result in unauthorized carrier changes.[1] Two years ago, in the earlier phase of this docket, the Commission adopted additional requirements for letters of authorization ("LOAs") to prevent deception of consumers through sweepstakes, drawings and similar misleading stratagems.[2] The current rulemaking is aimed at two further objectives.

First, pursuant to the new Section 258 of the Communications Act enacted in the Telecommunications Act of 1996, the Commission proposes extending its current verification procedures for interLATA carrier changes to also cover intraLATA and local exchange carrier change orders. Additionally, the Commission proposes procedures to assure that customers who are the victims of slamming receive appropriate reparations for excessive charges and lost "premiums" attributable to those unauthorized carrier

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1 See Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992)("PIC Verification Order"), recon., 8 FCC Rcd 3125 (1993).

2 See Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995)("1995 Report and Order").

changes. Although AT&T believes that several modifications of the Commission's tentative conclusions are necessary, the Commission's proposal in this regard is clearly appropriate and should be largely adopted.

However, the second objective of the Commission's rulemaking is an ill-advised effort to further increase the compliance burdens on legitimate carriers of verifying change orders, by requiring them to apply the same procedures now used for "out-bound" telemarketing calls to "in-bound" calls initiated by customers. The Further Notice (¶ 6) cites the increase in informal complaints of slamming that the Commission has received since 1993, and tentatively concludes that additional verification procedures are needed to stem the increasing tide of complaints.

AT&T believes that the Commission's tentative conclusion reflects a fundamental misunderstanding of the efficacy and need for increasing the verification requirements for telemarketing calls. As a threshold matter, there is no record evidence that unauthorized changes from in-bound calls have contributed to the increase in informal complaints cited by the Commission. Equally important, that increase has occurred contemporaneously with -- and in spite of -- the Commission's adoption of verification rules and procedures intended to reduce unauthorized changes through misleading telemarketing and LOAs.

The reason for this anomalous situation is clear: the mere promulgation of Commission verification

regulations, no matter how stringent, cannot effectively discipline unscrupulous carriers that routinely ignore those rules in order to acquire consumers. Indeed, because such regulations substantially increase the compliance costs of reputable carriers that observe the prescribed procedures, these rules enable other carriers to achieve unwarranted economic rewards for flagrantly violating those regulations.

The solution to this problem, as with any other consumer protection measure, is effective enforcement of the existing rules against offending carriers. Given the Commission's scarce resources, however, agency enforcement of the current antislamming rules has, to date, been limited at best. Fortunately, the Telecommunications Act of 1996 created a potent private enforcement remedy by authorizing carriers that have lost customers through unauthorized change orders to recover all revenues collected by the offending carriers from those customers. Under prior law, the displaced carriers' damages were generally limited to their lost profits from the affected customers, an amount that was often virtually impossible to prove. Rather than continue to place ever-increasing compliance burdens on reputable carriers, as the Further Notice in part proposes, the Commission should take steps to facilitate the operation of the new private enforcement remedy to provide an indispensable supplement to the Commission's own enforcement activities.

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AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the Commission's Further Notice in this proceeding, proposing additional modifications to the Commission's existing carrier selection rules and policies.[3]

I. THE CURRENT VERIFICATION RULES SHOULD BE EXTENDED, WITH MODIFICATIONS, TO INTRALATA AND LOCAL CARRIER SELECTIONS.

In accordance with its expanded authority conferred by Section 258 of the Communications Act to promulgate verification procedures for intraLATA toll and

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[3] Implementation of the Subscriber Carrier Selection Changes Provisions of Telecommunications Act of 1996/Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion Order on Reconsideration, FCC 97-248, released July 15, 1997. AT&T refers to that decision in these Comments as the Further Notice and Reconsideration Order, as applicable.

local exchange carrier ("LEC") selections, the Commission in the Further Notice (¶ 14) proposes to extend its current verification requirements to all carriers that submit to another carrier any request for a change in a consumer's telecommunications provider. AT&T fully supports the Commission's proposed adoption of this requirement. Where they have been observed by carriers and enforced by the Commission, the current verification rules have proven effective in preventing unauthorized changes of customers' interLATA service providers, and these verification procedures should prove equally effective if they are implemented by carriers for intraLATA and local carrier selections.

The Further Notice (¶ 14) also tentatively concludes that carriers (which, in almost all cases, are LECs) that execute change orders submitted to them have no obligation to perform "independent verification" to duplicate the verification efforts already performed by a submitting carrier. AT&T agrees fully with the Commission's conclusion, but believes that determination does not go far enough. Executing carriers not only should have no obligation to conduct independent verification of change orders, but should, in fact, be prohibited from performing any such verification of submitted orders. Any other result would enable the executing carrier to throttle competition under the guise of policing slamming. For example, an incumbent LEC ("ILEC") could seriously delay carrier change orders

submitted by a competing intraLATA toll provider or LEC while it purports to "verify" the accuracy of those orders. The Further Notice (¶ 14) clearly acknowledges the anticompetitive potential of such conduct, and the Commission for that reason alone should reject any role by executing carriers in "verifying" carrier changes.

While extending the current verification requirements to intraLATA toll and local exchange services may facilitate entry in those markets, such action alone is clearly insufficient to vindicate the Commission's pro-competitive objectives. The current interexchange verification methods are implemented against the background of well-established and clearly understood industry procedures for resolution of PIC disputes by LECs and IXCs. These dispute resolution procedures, however, presume that the LECs which must ultimately effectuate carrier changes are neutral and disinterested parties in those transactions.

With the advent of intraLATA and local exchange competition, however, LECs will no longer be able to function as neutral arbiters in carrier selection disputes because those entities will be actual competitors of carriers that submit change orders to them. This new competitive reality requires the Commission to expand the scope of this rulemaking to adopt modified dispute resolution procedures to govern

challenges to the validity of carrier selections.[4] AT&T urges the Commission to take this necessary step in the context of the present rulemaking.

II. THE "WELCOME PACKAGE" VERIFICATION OPTION SHOULD BE RETAINED WITH MODIFICATIONS.

In its PIC Verification Order in 1992, the Commission adopted as one of its four verification methods a "Welcome Package" option, under which a carrier that obtains a change order through telemarketing may mail the new customer an information package and may process the change order if the customer does not return a prepaid postcard, denying or canceling the order, within 14 days after the information package was mailed.[5] The Further Notice (¶¶ 17-18) tentatively concludes that the Welcome Package "could be used in the same manner as a negative-option LOA," which the 1995 Report and Order prohibited, and that for this reason the Welcome Package option should be eliminated. Comments on this tentative conclusion were requested by the Commission.

There is a clear-cut and controlling difference between the Welcome Package option and a prohibited

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[4] For example, in the case of local exchange carrier changes, only the affected customer should be permitted to challenge the validity of a change order. Allowing ILECs or CLECs to initiate such challenges would create unacceptable risks of harassment calculated to increase the costs of competing carriers that have submitted those orders.

[5] See 47 C.F.R. § 64.1100(d).

negative-option LOA, as the Commission itself recognizes in the companion Reconsideration Order (¶ 64). The Welcome Package LOA is sent to confirm a previous customer contact which has resulted in oral authorization for a carrier selection change; in marked contrast, the banned negative option LOA is a device that is unilaterally transmitted to the customer by a carrier without having received prior oral agreement to a carrier change.[6]

The Commission's request for further comment on eliminating the Welcome Package is premised entirely on a hypothetical and implausible scenario in which a carrier bent on slamming would send a customer an unsolicited Welcome Package and execute the carrier change when the customer does not timely return the pre-paid disclaimer postcard, which the Commission states (Reconsideration Order, ¶64) "could have the practical effect of operating like a negative-option LOA . . . ." However, no party has adduced evidence of even a single instance in which a customer has been slammed in the manner described

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[6] This fundamental distinction was pointed out by numerous parties, including AT&T, in response to a petition for reconsideration of the 1995 Report and Order filed by the National Association of Attorneys General ("NAAG"). In the Reconsideration Order the Commission denied the NAAG petition, stating that it "agree[d] with these . . . commenters regarding the distinction between a post-sale verification . . . and negative option LOAs, which are prohibited . . . ."

above -- much less that such abuses have occurred in any appreciable number of cases.[7] The bare theoretical possibility that the Welcome Package could be used in the manner the Further Notice envisions cannot serve as a basis for reasoned Commission decisionmaking to eliminate legitimate use of the Welcome Package option.[8]

Instead of eliminating that verification option, the Commission should revise its current rules to eliminate certain unnecessary restrictions that unduly limit the value of that procedure for consumers and carriers.[9] Specifically, the Commission should eliminate

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[7] The absence of any such record is scarcely surprising, because it is inconceivable that an unscrupulous carrier would go to the time, trouble and expense of mailing an unsolicited Welcome Package to a customer (who might thereby be put on notice of the intended change), rather than simply implement the unauthorized selection without any notice at all.

As AT&T showed in the earlier phase of this proceeding, many slammed customers never receive any prior contact from the unauthorized carrier; for example, in a 1994 survey 18 percent of non-English speaking residential customers who had been slammed reported that they had never been contacted to authorize PIC changes from AT&T to another IXC. See AT&T 1995 Comments, pp. 4-5.

[8] See, n.33, infra. By contrast, in the earlier phase of this proceeding the Commission correctly prohibited the use of negative-option LOAs, even without record evidence of the prevalence of that practice, because there was no need to balance any purported benefits of that device against the unquestioned consumer harm of unauthorized carrier changes.

[9] The Welcome Package option adopted in the PIC Verification Order was originally proposed by the

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the requirement that the package include identification of the customer's current carrier.[10] This information is of no apparent value to the consumer, who presumably already knows the current carrier. Moreover, because such data are generally unavailable to the carrier seeking to confirm the transaction,[11] this superfluous requirement often effectively precludes use of the Welcome Package option.

Additionally, the Commission should extend the maximum interval for mailing the Welcome Package from the current three business days to seven business days. The current stringent mailing limit unnecessarily precludes carriers from using the Welcome Package option as a cost-effective follow-up to other verification methods, such as attempts by an independent third-party verifier to telephone the subscriber. Modestly increasing the window for mailing (while retaining the fourteen day waiting period after mailing) will have no adverse effects on

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National Association of Regulatory Utility Commissioners ("NARUC"), but NARUC's proposal was not the principal focus of that proceeding. As a result, carrier input on the details of this verification method was therefore limited.

10 See 47 C.F.R. § 64.1100(d)(2).

11 For example, LECs will disclose to AT&T the name of customers that are presubscribed to its inter- and intraLATA services, but quite properly do not disclose the identities of the specific presubscribed carriers that serve other customers.

consumers and will allow carriers to make more efficient use of this verification option.

III. ABSOLVING CUSTOMERS OF BILLS IN DISPUTED CARRIER CHANGES WOULD UNDERMINE SECTION 258 AND IS IN ALL EVENTS INAPPROPRIATE AS A SLAMMING DETERRENT.

In its 1995 Report and Order, the Commission addressed and rejected proposals by some commenters that customers be absolved of liability for their long distance charges in cases of unauthorized carrier changes. Its decision trenchantly explained the legal and policy deficiencies of such an "absolution" approach:

> "The 'slammed' consumer does receive a service, even though the service is being provided by an unauthorized entity. The consumer expects to pay the original rate to the original IXC for the service. Except for the time and inconvenience spent in obtaining the original PIC, consumers are not injured if their liability is limited to paying the toll charges they would have paid to the original IXC."[12]

Nevertheless, in response to renewed requests by some of the same unsuccessful commenters in the prior phase this proceeding, the Commission in the Further Notice (¶ 27) has again requested comment "on whether slammed consumers should have the option of refusing to pay charges assessed by an unauthorized carrier."

The short answer to these commenters' renewed proposal is that nothing has changed in the two years since the 1995 Report and Order to alter the conclusion

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[12] 1995 Report and Order, 10 FCC Rcd at 9579 (¶ 37) (footnote omitted).

that absolving customers of all liability for charges in a slamming dispute is unwarranted. Indeed, with the enactment in the Telecommunications Act of 1996 of a new Section 258 of the Communication Act, absolving customers of all charges is even more inappropriate.

First, there is no dispute (either now or in the earlier phase of this proceeding) that the 1995 Report and Order properly replicates the legitimate economic expectations of customers whose selected carrier has been changed without authorization, by requiring the unauthorized carrier to re-rate its bill to the level that would have been charged to the customer in the absence of an unauthorized change.[13] With this "'make whole' remedy,"[14] consumers are fully insulated against exorbitant charges by another carrier in the event of an unauthorized change.[15] Absolving such customers of all

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[13] The Commission held a decade ago that customers are not liable for carrier change charges in connection with unauthorized changes. See Illinois Citizens Utilities Board (Petition for Rulemaking), 2 FCC Rcd 1726 (1987).

[14] 1995 Report and Order, 10 FCC Rcd at 9579 (¶ 37).

[15] In a companion ruling in its 1995 Report and Order (id. at 9580 (¶ 39)), the Commission required the authorized carriers to refrain from billing optional calling plan minimum payments to presubscribed customers whose service has been changed without authorization, unless the plan provides additional benefits (e.g., calling card discounts) and the customers' liability for the minimum payments are clearly stated in the authorized carrier's tariff. This requirement further protects "slammed"

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charges is unnecessary to achieve that objective; as the Commission found more than a decade ago, "[c]omplete forgiveness of charges exceeds the damages" suffered by a slammed customer.[16]

Moreover, as the Further Notice (¶ 27) clearly recognizes, absolution of customers' charges from unauthorized carriers would eviscerate the carefully crafted private enforcement remedy provided by Congress in Section 258(b) of the Communications Act. That new statutory provision makes a carrier that violates the Commission's prescribed carrier change verification procedures liable to the subscriber's authorized carrier "in an amount equal to the charges paid by such subscriber after such violation," in accordance with rules to be adopted by the Commission. As AT&T has already explained in these Comments, this right of action based on collected revenues rather than lost profits, as under traditional measures of damages, creates a powerful incentive for private enforcement by carriers injured by unauthorized changes of their subscribers.

Absolving "slammed" customers of all liability for charges from the unauthorized carrier is utterly

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customers from incurring unwanted charges as a result of an unauthorized change.

16 Franks v. U.S. Telephone, Inc., File No. E-86-11, Mimeo 4620, released May 7, 1986 (¶ 12).

antithetical to this objective. As the Commission correctly states in the Further Notice (¶ 27),

> "Under Section 258(b), the liability between properly authorized and unauthorized carriers exists only to the extent that the unauthorized carrier actually collects charges from a slammed subscriber . . . We recognize that if subscribers are absolved of all liability for charges assessed after being slammed . . . the properly authorized carrier would be deprived of foregone revenue" (emphasis in original)(footnote omitted).

No justification has been -- or could be -- shown for depriving economically injured carriers of their most effective remedy for slamming directed at their customers, as would clearly be the case if these commenters' suggestion were to be adopted.

The absolution proposal thus cannot be defended on any basis. Rather than vindicating the legitimate economic expectations of consumers, absolution would simply provide subscribers a windfall in the name of "deterring" slamming, while at the same time vitiating the very deterrent mechanism that Congress only recently enacted to control slamming.

IV. THE COMMISSION SHOULD SIMPLIFY THE PROPOSED PROCEDURES FOR DETERMINING CARRIERS' LIABILITY.

Section 258 of the Communications Act authorizes the Commission to adopt rules to assure that an authorized carrier that is displaced by another carrier that has failed to follow the Commission's verification requirements will receive all revenues received by the unauthorized carrier from that customer. This mechanism creates a powerful economic incentive for

private enforcement of compliance with the Commission's rules to complement the enforcement efforts of the Commission and state agencies. Unfortunately, the Further Notice (¶ 28) proposes procedural rules that would have the unintended effect of undermining the effectiveness of private enforcement efforts.

Specifically, proposed Section 64.1170(a) of the new rules would require the authorized carrier to make demand upon the unauthorized carrier for the revenues to which it is entitled under Section 258 within ten days of receiving a slamming complaint from a displaced customer.[17] There is no apparent reason for imposing such a stringent deadline on an injured carrier -- especially if the effect of any noncompliance would be loss of the Section 258 remedy.

As a threshold matter, the mere fact that a customer may correctly claim to have been changed without authorization does not, in itself, create any liability

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[17] The proposed rule fails to account for the fact that in many instances customers who have been changed without authorization do not complain to the displaced carrier, but instead raise that dispute directly with the LEC. Moreover, AT&T's experience indicates that in many cases consumers do not have accurate information regarding the identity of the unauthorized carrier, due to factors such as the large number of interexchange resellers, carriers' use of multiple trade names, etc. Thus, even when confronted with a *bona fide* slamming complaint from a displaced customer the authorized carrier may lack sufficient data to make a demand for reimbursement to the appropriate entity.

under Section 258, provided that the carrier which ordered the change did so in compliance with prescribed verification procedures. Whether a specific carrier may have failed to comply with these requirements often becomes apparent only over a period of time as unusual numbers of complaints of unauthorized changes are received by other carriers and public agencies. A ten day period in which to lodge a demand for payment is plainly insufficient for this purpose.

Additionally, the Commission's proposed Section 64.1170(b) makes no provision for the carrier that receives a demand to make any showing of its compliance with verification requirements, much less set any deadline within which the carrier must do so or specify the appropriate proof of compliance. It is all the more unreasonable therefore to place the onus of an immediate demand for payment upon the injured carrier. The Commission should specify both a reasonable deadline for response, such as 60 days, and the evidence that the responding carrier must provide to substantiate its compliance with the verification rules.

Modifications are also required in the proposed rules governing "premiums," such as travel bonuses, that would have accrued to the customer but for the unauthorized change. The legislative history accompanying Section 258(b) authorizes the Commission in this rulemaking to assure that customers whose carrier choice is changed without authorization receive

reimbursement from the offending carrier for such premiums.[18] To effectuate this legislative mandate, the Further Notice (¶ 30) seeks comment on a proposal under which the carrier that makes an unauthorized change would pay to customer's preferred carrier "an amount equal to the value of such premiums, as reasonably determined by the properly authorized carrier," and the latter carrier will then restore the lost premium to the customer.[19] The Commission also tentatively proposes dispute resolution procedures under which the Commission may institute proceedings to determine the value of lost premiums where the unauthorized and properly authorized carriers are unable to resolve those issues through private negotiations.[20]

While AT&T fully shares the Commission's objective that "slammed" customers be made whole for the

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18 See Joint Explanatory Statement, p. 136.

19 The properly authorized carrier's duty to restore the premiums arises only after it has received payment from the unauthorized carrier. See Further Notice, ¶ 30 ("Under our proposal, upon receiving the value of such premiums from the unauthorized carrier, the properly authorized carrier must then provide or restore to the subscriber any premiums . . . .")(emphasis supplied). The Commission's tentative proposal also provides that "[w]hen a particular premium cannot be restored, the properly authorized carrier may substitute an equivalent premium or dollar value as reasonably determined by the properly authorized carrier." See proposed Section 64.1170(c).

20 See Further Notice, ¶ 31; proposed Section 64.1170(c).

premiums lost to those subscribers due to unauthorized carrier changes, the Commission's proposal appears to be an unnecessarily complex and burdensome approach to achieving the desired result. Many premiums such as airline miles, "points" for merchandise programs, and the wide variety of other promotional programs that are employed by carriers frequently do not have well-established and independently ascertainable fair market values. Thus, it is likely that in many cases the values of those premiums determined by an authorized carrier will become the subjects of disputes between carriers and, to the extent that those disagreements are not resolved by private negotiations, will require Commission proceedings to resolve issues (such as the value of an air line mile) that may be beyond its usual expertise and which, in all events, represent an unnecessary drain on scarce agency resources.

AT&T believes that there is a far more simple and straightforward procedure for accomplishing the Commission's objective of making proper reparations to customers affected by unauthorized carrier changes. The premiums which the Commission seeks to restore to such customers would, but for the unauthorized change, have been paid or otherwise purchased by the properly authorized carrier out of its revenues from those customers. The solution to the problem of lost premiums -- and, more generally, to restoring the properly authorized carrier's position -- is thus to require the

unauthorized carrier to make the displaced carrier whole for at least all revenues it would have been entitled to from the affected customers.

Achieving this result would require only modest incremental efforts to those already authorized by statute and existing Commission prescriptions. Under Section 258(b), the properly authorized carrier is already entitled to receive all revenues improperly collected from the customers by the unauthorized carrier. Insofar as those revenues equal (or, perhaps in some cases, exceed) the amounts that would have been charged by the properly authorized carrier, that entity should already be able to restore the lost premiums to its subscribers without the need for any further intercarrier negotiations or regulatory proceedings.

Moreover, to the extent that the revenues paid to the properly authorized carrier may be less than that entity would have charged those customers, the unauthorized carrier should be required also to pay over that deficiency. Those amounts should be readily determinable by these carriers; the Commission's existing reparations process adopted in the 1995 Report and Order already requires carriers to re-rate customers' bills to the level that they would have been charged by their

properly authorized carrier.[21] However, instead of simply ignoring any additional charges that would have accrued to the properly authorized carrier, as is now the practice, under AT&T's proposal the unauthorized carrier would be required to provide those funds to the customers' preferred carrier.

This procedure will permit the properly authorized carrier promptly to make reparations to its customers for their lost premiums without the potential for intercarrier disputes and consequent delays in payment that are inherent in attempting to reach agreement on the "reasonable value" of premium awards. Additionally, adopting this reparation mechanism will supplement the deterrent effect on slamming that Congress sought to achieve in Section 258(b), and thereby enhance the consumer protection objectives of that legislation and the Commission's current regulatory regime. And AT&T's proposal will accomplish these public interest goals without the administrative complexity and burden, on both carriers and the Commission, that would

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[21] While the Commission could retain its currently proposed dispute resolution mechanism to address any intractable controversies about the correct level of charges, it is unlikely that such disputes would often arise because carrier charges, unlike the value of premiums, are usually ascertainable. And in the unlikely event that Commission adjudication of such a dispute becomes necessary, it should be more easily resolved because such rate matters are clearly within the agency's administrative expertise.

inevitably result from adoption of the tentative proposal in the Further Notice. AT&T therefore urges the Commission to adopt the foregoing proposal in lieu of the tentative proposal.

V. THE COMMISSION SHOULD EXTEND ITS CURRENT VERIFICATION PROCEDURES TO CARRIER FREEZES.

In addition to proposals for revisions to the Commission's carrier selection rules, the Further Notice (¶¶ 21-24) seeks comment on the desirability of extending those verification methods to cover preferred carrier "freezes," which prevent a change in the subscriber's selected carrier unless that customer authorizes such a change. As the Further Notice (¶ 22) recognizes, the freeze mechanism can provide useful protection to consumers against slamming, but may also operate as a potent deterrent to competitive entry -- especially in the incipiently competitive intraLATA and local market segments.

AT&T supports the extension of present verification methods to the carrier freeze mechanism, with appropriate modifications to tailor those procedures to this additional application. The Commission has already compiled an extensive record on the need for such changes to prevent competitive abuses of the freeze mechanism by LECs in connection with MCI's March 18, 1997

rulemaking petition,[22] which the Further Notice (¶ 21) has expressly incorporated into this proceeding. The comments there demonstrate not only the need to prevent such misuse of the otherwise beneficial freeze procedure, but also the desirability of applying the Commission's carrier selection verification process to that mechanism. As AT&T showed in its Comments on MCI's petition (p. 8), this extension of the Commission's current rules would allow carriers expressly authorized by the subscriber to submit the customer's change order directly to a LEC and to remove an existing freeze (or change the subscriber's selected carrier when a freeze is already in place) without undermining the consumer protection provided by the freeze mechanism.[23]

However, the Commission must recognize that extending the verification rules to the freeze mechanism may help to curb competitive abuse of that procedure, but that this step will not effectively preclude LEC abuse of carrier selection freezes in the absence of other market

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22 See MCI Telecommunications Corp. (Petition for Rulemaking), CCB/CPD 97-19.

23 To insure that customers are properly informed that a frozen carrier selection has been modified, or that a freeze has been applied to or removed from their account, AT&T also showed that LECs should be required to confirm those transactions to customers in writing, and to specify the service level (i.e., inter-, intraLATA or local) to which the freeze applies and the identity of the carrier(s) to which the frozen choice applies. See AT&T Comments on MCI Petition, p. 8.

rules to address such conduct. For example, AT&T has shown that, in the absence of data identifying which local subscribers have elected a carrier selection freeze (and the level of service to which it applies), carriers will be unable effectively to use the verification procedures to market their services to customers who may have carrier freezes in place.[24] The Commission must therefore require LECs to furnish such data to other carriers to facilitate the accurate and timely implementation of customers' carrier selection changes and to avoid unnecessary confusion and cost.

Similarly, the Commission must adopt rules to prohibit LECs from applying an across-the-board ("account level") carrier freeze to a customer's account when a freeze is requested as to only one level of service (e.g., interLATA calls).[25] Market rules are also needed to address LEC sales practices that capitalize on the freeze mechanism to advantage those incumbent carriers and their affiliates over new competitors.[26]

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[24] See AT&T Comments on MCI Petition, p. 9.

[25] State regulators have already prohibited this practice in some jurisdictions. See AT&T Comments on MCI Petition, p. 3 n.1.

[26] See id., pp. 6-7. For example, to assure that they do not "overhang" potentially competitive markets, LECs should be prohibited from affirmatively marketing freezes to their customers until at least one year after intraLATA toll dialing parity is available through the LEC's service area. LECs should also be required to accept three-way calls

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